

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

Texas Gas Transmission, LLC

Docket No. RP03-544-003

ORDER ON REHEARING

(Issued March 5, 2004)

1. In this order, the Commission denies a request for reconsideration, clarification or rehearing filed by ProLiance Energy, LLC (ProLiance) on November 26, 2003 of the Commission's October 28, 2003 Order on rehearing.¹ The October 28 Order denied ProLiance's request for rehearing of a Director Letter Order issued by the Commission on July 31, 2003.

Background

2. On July 3, 2003, Texas Gas Transmission, LLC (Texas Gas) submitted new proposed tariff language (July 3 Filing)² that provides for Texas Gas to collect from its customers any energy, value added, sales or use tax, or similar tax levied on customers by the federal government, any state government, or any political subdivision of a state.³

3. The July 31 Letter Order accepted Texas Gas's proposed tariff language effective July 7, 2003, but inadvertently failed to address certain comments ProLiance had filed on July, 15, 2003, in response to the tariff filing.

¹ Texas Gas Transmission, LLC, 105 FERC ¶ 61,143 (2003) (October 28 Order).

² On August 4, 2003 (August 4 Filing), Texas Gas filed to incorporate the tariff provision accepted in the July 31 Letter Order into a filing to change its corporate name from Texas Gas Transmission Corporation to Texas Gas Transmission, LLC.

³ The genesis of the July 3 Filing was a Commonwealth of Kentucky tax law change on June 1, 2003 that requires Texas Gas to collect sales and use tax on service charges for the distribution, transmission, or transportation of natural gas for use in Kentucky.

4. In its August 11, 2003 request for rehearing of the July 31 Letter Order, ProLiance incorporated its July 15 Comments questioning whether such costs should be collected and also requesting that the automatic tracking of such costs should be subject to Commission review.

5. The Commission's October 28 Order denied ProLiance's request for rehearing stating that Texas Gas's proposed new tariff language is consistent with language approved in other pipelines' tariffs. The October 28 Order also explained that Texas Gas will only function as a tax conduit for Kentucky, for the purpose of collecting sales and use taxes on natural gas transportation services for industrial end users.

ProLiance's November 26 Request for Clarification

6. In its November 26 Request for Clarification, ProLiance argues that it is incorrect to categorize the particular tax which Texas Gas seeks to impose as a tax on industrial end users within Kentucky. ProLiance argues that the tax collection authority Texas Gas seeks in this proceeding would appear to extend to all customers on its system regardless of whether they are end users within the State of Kentucky.

Discussion

7. The Commission agrees that it does not appear that the Kentucky law makes any distinction regarding types of customers. Rather, the sales and use tax applies to natural gas transmission and distribution services, for whatever type customer the services are provided. This does not, however, alter the Commission's finding that the tariff provision at issue, though broader than may be needed to address this particular tax, is not unreasonably broad. Texas Gas may reasonably have wished to "cover the territory" of possible taxes that may be imposed on the service it provides to its customers without having to make periodic tariff filings to do so. So long as Texas Gas is simply performing a tax collection function for the state, this does not appear unjust and unreasonable.

8. The Commission, therefore, rejects again ProLiance's claims that Texas Gas's new tariff provision is overreaching because it intends to capture any taxes and allows Texas Gas to be reimbursed for "applicable energy, value added, sales or use tax or similar tax." ProLiance argues that the Commission should, if it fails to reject Texas Gas's current filing, at least provide for some review process to determine whether tax collections in the future are appropriate for automatic pass-through under this provision of Texas Gas's tariff. Texas Gas is only able to collect taxes under Section 36 that are taxes levied on customers for transmission service provided to the customers, which are merely collected by Texas Gas as a conduit for the taxing agency. Section 36 does not authorize Texas Gas to collect any other taxes, such as taxes on the value of the

pipeline's property or on its income, which are not similar to taxes levied on its services. Accordingly, no additional review process is required.

The Commission orders:

ProLiance's request for rehearing, reconsideration or clarification is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.